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LETTER

TO THE

AUTHOR

OF THE

QUESTION STATED.

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BY ANOTHER  
MEMBER of PARLIAMENT.

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L O N D O N :

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L E T T E R  
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O F T H E  
Q U E S T I O N S T A T E D.

S I R,

I N your Letter to one of your  
Constituents, you are pleased to  
make honourable Mention of a  
Work \*, compiled many Years ago,

A 2 and

\* Commentaries on the Laws of *England*.

and since published for the Use of young Students: But at the same Time you insinuate, that the Author, upon a late Occasion, had departed from the Principles which he there has inculcated and avowed.

The Gentleman, whose Conduct upon that Occasion has been arraigned in no very candid Manner, is much obliged to his Antagonists for the Compliment they have paid him, in supposing that the Uniformity of *his* Sentiments could possibly be of Consequence to the Public, or merit its serious Attention. Yet he did not, for some Time, consider  
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the Accusation as worthy the least Degree of Notice. When this Calumny was first solemnly broached by a Person, who (of all Men) should not have complained of Inconsistency with Regard to Mr. *Wilkes*, that Gentleman received upon the Spot a sufficient Chastisement from an able Hand, for exercising so unfairly his Talent of Misrepresentation. When, the next Day, it was proclaimed to the World in the Shape of a Toast at a Tavern, no sober Man could be angry at any Instance of convivial Pleasantry, among a Knot of such merry Politicians, in the Jollity of their new Alliance. When it came,  
by

by a regular Progression, to be the frequent Theme of anonymous Scurrility, in the dirty Channel of a News-Paper, it was deservedly left to perish without Reply, with the rest of the Lyes of the Day. But, when it is adopted by *a Member of Parliament*, in a public Address to his Constituents, and when a Gentleman of Rank and Reputation does not scruple to own that Performance, it then becomes a Man's Duty to himself and to his Character, thus to vindicate (once for all) his Writings, and his Conduct, from the Charge of Inconsistence and Duplicity.

I shall

I shall make no Apology for supposing that, by the Paragraph in page 20 of your Letter, you meant to convey to your Correspondent, that the Author of the Book in Question had *disputed its Tenets*, and *contradicted its Assertions*, in a late *political Conversation*; and that by that *Conversation* you meant to allude to the Debate of the Eighth of *May*. All your Readers understand it in this Light, and you are too much a Gentleman to disavow it. You add, “ that you shall continue to  
 “ prefer the *Thoughts* of the Pro-  
 “ fessor to the *Words* of the Poli-  
 “ tician.”

“ tician.” And indeed, Sir, if they were contrary to each other, I should think you was perfectly in the right. But I trust that, upon mature Consideration, your own Candour will convince you, that you have too hastily adopted the false Glosses of your new Ally, to whose Judgment you have not always been used to pay so implicit a Deference. To Him indeed the Author of the Commentaries owes no Explanation or Ceremony; who could coolly form a Plan to impose upon so respectable an Assembly, could deliberately commit it to Writing, and without Provocation could draw it  
from



from his Pocket in the Conclusion of a Debate, after Midnight ; in order to traduce the Integrity of a Man, for whom he professed a Friendship, and who deserved other Treatment from *his* Hands. But to you, Sir, who have only mistaken his Meaning, and have urged that Mistake with Decency, nay even with a Degree of Civility, the Author owes every Endeavour in his Power, to vindicate his genuine Sentiments, and to shew that his Judgment, however erroneous or singular) has always been uniform and steady.

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Erroneous it may possibly be, and very probably was so, since he could not intirely agree with either the Ministry or the Opposition, in their Conduct with Respect to Mr. *Wilkes*. He concurred with the latter in disapproving the Vote of the 2d of *February*; because he thought it beneath the Dignity of Parliament to censure any Libel (however atrocious) that was merely directed against a Minister. In the rest of the Questions he heartily concurred with the Majority, whenever he happened to be present: And in all of them he followed, without Regard to any Party

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Connexions, the Sentiments which he had formed for himself, and which he always had publicly avowed.

To elucidate this Matter (if it really is of Consequence to any Man in *England* but himself) let us now compare *the Thoughts of the Professor*, as delineated by himself in his *Commentaries*, with *the Words of the Politician*, supposed to have been delivered in Parliament. The Doctrine, which he supported in his Speech, I take to have been this: “ That the  
 “ House of Commons had a Right to  
 “ adjudge Mr. *Wilkes* incapable of  
 “ being elected a Member, to serve

“ in this present Parliament.” His *Thoughts*, when a Professor, will fully appear from an impartial Review of his Work.

You say <sup>b</sup> that you “ shall copy  
 “ *verbatim* the learned Professor’s  
 “ Enumeration of legal Difabilities;  
 “ of which some are *Common*, others  
 “ of *Statute* Law.—The Disqualifi-  
 “ cations at *Common* Law are Aliens,  
 “ &c.” Unfortunately for the Ar-  
 gument intended to be grafted upon  
 these Quotations, you have departed  
 from your promised Accuracy, and  
 unwarily misquoted the Words.

The

<sup>b</sup> Page 21.



The Author speaks not of any Disabilities at *Common Law*, as distinct from the *Law of Parliament*; or which were previously known to exist, before they were adjudged by the House. The Supposition that there can possibly subsist any *Common Law*, distinct from the *Law of Parliament*, respecting the Qualification of Members, is the very Fallacy upon which every Argument of the Minority was grounded, that appeared to have a Shadow of Reason. What the Author *has* said<sup>c</sup>, is this: That  
 “ the Qualification of Persons to be  
 “ elected depends upon the *Law*  
 “ *and*

<sup>c</sup> Comm, Vol. I. Page 175.

“ *and Custom of Parliaments*, and  
 “ certain *Statutes* referred to in the  
 “ *Margin.*” And what he meant  
 by the *Law and Custom of Parlia-*  
*ments* he has explained in a preced-  
 ing Page<sup>a</sup>; wherein he lays it down,  
 “ that the High Court of Parliament  
 “ hath its own peculiar Law, called  
 “ the *Lex & Consuetudo Parlia-*  
 “ *menti*;—that the Whole of this  
 “ Law and Custom of Parliament  
 “ hath its Original from this one  
 “ Maxim, that whatever Matter ari-  
 “ ses concerning *either House* of Par-  
 “ liament, ought to be *examined,*  
 “ *discussed,* and *adjudged* in that  
 “ House

<sup>a</sup> Comm. Page 163.

“ House to which it relates, and  
 “ not elsewhere ; — but that the  
 “ Maxims upon which they proceed,  
 “ together with the Method of Pro-  
 “ ceeding, rest intirely in the Breast  
 “ of the Parliament itself, and are  
 “ not defined and ascertained by any  
 “ particular stated Laws.”

Having therefore first premised,  
 that the Qualification of Persons to  
 be elected Members of the House of  
 Commons depends either upon the  
*Law and Custom of Parliaments*  
 (thus previously described and under-  
 stood) or else upon certain Statutes ;  
 he

he immediately proceeds <sup>e</sup> to reckon up a Number of Restrictions and Disqualifications of Persons in different Classes: Some of which have been adjudged by a mere Vote of the House of Commons, others created by Act of Parliament. Among the first Sort are Aliens <sup>f</sup>, Judges <sup>g</sup>, Clergy <sup>h</sup>, Attainted Persons <sup>i</sup>, and Returning Officers <sup>k</sup>. And after having enumerated these, and then a Number of statutable Disabilities, he concludes <sup>l</sup>, that “subject to these Restrictions, “ every

<sup>e</sup> Comm. Page 175. <sup>f</sup> These were excluded by the Votes of 10 Mar. 1623. 18 Feb. 1625. <sup>g</sup> 9 Nov. 1605. <sup>h</sup> 13 Oct. 1553. 8 Febr. 1620. 17 Jan. 1661. <sup>i</sup> 21 Jan. 1580. <sup>k</sup> 25 Jun. 1604. 14 Apr. 1614. 22 Mar. 1620. <sup>l</sup> Comm. Page 176.



“ every Subject of the Realm is eligible of common Right.” Not having therefore expressly mentioned, among the Persons disqualified, such as are adjudged so to be by a Vote of the House of Commons (though he has mentioned many Classes that are disqualified by no other Means) the present artful Conclusion is drawn, that such Persons were *thought by the Professor* to be still eligible of common Right.

But surely, when a Writer has asserted, that by the Law of Parliament all Matters relating to the House of Commons ought only to

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be adjudged in that House ;—that the Qualification of Persons to be elected Members depends upon this Law of Parliament ;—and has specified many Incapacities, which are declared by no Statute, but merely by a Vote of the Commons ; —no Man of common Candour would conclude, from any subsequent verbal Omission (supposing it even an Inaccuracy) that he thought a Resolution of the House, adjudging A or B to be incapable, is not an authentic Determination of what is the Law of Parliament. However, the Reason of the Omission (for it happens not to be an Inaccuracy) seems obvious

obvious to every Understanding, not wilfully perverted by Prejudice. The Author is recounting only such Disabilities as had *then* been adjudged or created; and, among these, such only as are *permanent, general,* and applicable to *whole Classes* of Men. It was unnecessary, and would even have been improper, to specify any *temporary* Incapacity, inflicted by the Censure of the House: And he could not, without the Spirit of Prophecy, when his Book was compiled in 1753, or when published in 1765, have specified the Disability of any *private Individual* arising in 1769.

Perhaps it will be said, that though Individuals, &c. may properly be omitted, yet the Author should have mentioned, as a *general* Class, “ Persons incapacitated by a Vote of “ the House of Commons,” had he thought such a Vote would incapacitate. But, conscious as he is of Imperfection, he is not altogether so inaccurate, as to rank the *Means* of creating a Disability among the Disabilities created. He hath mentioned, in their proper Place, at the Head of the several Incapacities, the Foundations upon which they stand. He hath said that the Qualifications



tions of Members, (and, of Course, their Disqualifications also) depend partly on the Law of Parliaments, adjudged by the House of Commons, and partly upon Acts of the Legislature. And it is impossible to conclude from any subsequent fancied Omission, that he *thought* the House of Commons had no Power to adjudge Mr. *Wilkes* incapable of being elected a Member to serve in this present Parliament; unless we can also conclude, that because he has omitted the Case of the *South-sea* Directors, who were *perpetually* disqualified by the Statute 7 *Geo. I. c. 28.* and has not mentioned, as a  
 general

general Class, “ Persons incapacitated by Act of Parliament,” he was also of Opinion that, notwithstanding that Act, Sir *John Blunt*, Mr. *Sawbridge*, or any other of the Directors, were still eligible of common Right. The Argument proves both, or it proves nothing.

The Whole then of this Author's Doctrine, when taken together, amounts clearly to this: “ That  
 “ some Classes of Men are ineligible,  
 “ either by Statute, or by the Law  
 “ and Custom of Parliament declared and adjudged *pro re nata*  
 “ by the House of Commons; and  
 “ that

“ that all others are eligible of common Right.” And it is highly consistent with this Doctrine to maintain, by *Word* or by *Vote*, that Circumstances of Criminality may from Time to Time arise, whereby an Individual may forfeit that common Right, and be adjudged ineligible *for the Parliament then in being* by a Resolution of the House of Commons, or *for ever* by an Act of the Legislature.

I have industriously avoided saying any thing on the political Merits of the principal Question in Dispute. My only Intention in this  
Address

Address was to vindicate to you and the Public, from the Charge of Inconsistence and Duplicity, the Character of one, who, though warmly attached to his Sovereign and the free Constitution of his Country, detests all the Violence of Party, from which Inconsistence is inseparable; and who had much rather be, and be esteemed, an honest Man, than the ablest Politician in *Europe*.

8 MA 64  
28 June, 1769.

I am, &c.

*F I N I S.*